

REMARKS

In response to the Final Office Action mailed June 3, 2004, Applicants respectfully request reconsideration.

Claims 1, 2, 15, 16, 20-26, 51-60, 68, and 73-76 are pending in this application, of which claims 75 and 76 are independent claims. Dependent claims 8-14 and 69-72 currently are withdrawn from consideration due to a previous restriction requirement, but are entitled to consideration upon the allowance of any base claims from which they depend, pursuant to MPEP §809.04.

In this amendment, claims 1, 21, 23, 24, 25, 51, 58, 59, 60, 68 and 74 have been amended to depend from an allowable independent claim, as discussed further below. Additionally, claims 17-19 have been cancelled (claims 3-7, 27-50 and 55 previously were cancelled). The application as now presented is believed to be in allowable condition.

A. Allowed Claims

Applicants note with appreciation that the Examiner has allowed claims 75 and 76. In view of the allowance of these claims, the remaining claims in the application have been amended as necessary such that each of the remaining claims depends from allowed claim 75. This includes currently withdrawn dependent claims 8-14 and 69-72, which now should be entitled to consideration. Accordingly, all pending claims are in condition for allowance.

B. Claim Rejections Under 35 U.S.C. §103

On page 2 of the Office Action, claims 1, 2, 15-26, 51-54, 56-60, 68, 73 and 74 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Havel (U.S. Patent No. 5,283,517). Applicants respectfully traverse the rejections of these claims, as discussed for example in Applicants' response of March 1, 2004 to a previous Office Action dated October 27, 2003. In light of the amendments herein, however, these rejections now are moot.

C. Improper Final Rejection

Applicants also wish to point out that the finality of the present Office Action respectfully is believed to be improper. In particular, although the Examiner formally has rejected the claims

over Havel alone, the Examiner appears to also have relied on other references to support the claim rejections. For example, on pages 2-3, the Office Action states:

In order to support examiner's initial position, such skills are cited in the references in PTO-892. For instances [sic], Dimmick shows a conventional LED bar display.....Hsieh teaches that a light source (4) projects light onto the objects.....; Bell shows that a LED [sic] device (in Figure 2), which is capable of showing color, create [sic] momentary image on the objects to human eye [sic].

Accordingly, the Examiner has introduced new references, previously not of record, to support the current rejections of the claims, none of which was amended in Applicants' previous response.

Applicants respectfully note that, pursuant to MPEP §706.07(a), a second or any subsequent action on the merits will not be made final if it includes a rejection on newly cited art (other than information submitted in an information disclosure statement under 37 CFR 1.97(c)) of any claim not amended by the Applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art.

Again, in response to the previous Office Action, no claims were amended. Yet, in the current Office Action, newly presented references provided by the Examiner are relied upon to reject the claims. In view of the foregoing, the finality of the present Office Action is believed to be premature, and Applicants respectfully request that said finality be withdrawn.

D. General Comments on the Dependent Claims

For the sake of brevity, Applicants believe that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. However, Applicants do not concur that the basis for the rejection of any of the dependent claims is proper. In fact, at least some dependent claims recite features that are completely absent from, and not suggested by, the Havel reference. Therefore, Applicants reserve the right to specifically address the separate patentability of each dependent claim in the future, if deemed necessary.

E. Information Disclosure Statements

Applicants note that for Information Disclosure Statements (IDSs) filed on April 5, 2001 and September 24, 2003 in the present application, **Applicants have not yet received copies of**

the Forms PTO-1449 initialed by the Examiner to indicate consideration of the references cited therein. Applicants respectfully request that the Examiner acknowledge reviewing the references cited in these IDSs by providing, in subsequent correspondence to the Applicants, an initialed copy of the Forms PTO-1449 for these IDSs.

F. Conclusion

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicants' attorney at the telephone number listed below to discuss any outstanding issues relating to the allowability of the application.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50/2762.

Respectfully submitted,
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